influenced the bank or their agents. However that may be they certainly contracted to grant a tenancy. The only defect is in the conveyancing aspect which is technical.

The plaintiffs rely on a purely legal point and the defendants have groped vainly for a purely legal answer. Both have failed to grasp the principles that law and equity are administered concurrently and that in case of conflict equity prevails.

An attempt to convey a legal interest in land to an infant operates as an agreement for valuable consideration to execute a settlement in his favour. Friendly and charitable societies can take leases in the names of trustees.

The association being, like an infant, a person under partial disability the same principle should apply and the landlords' assent to the assignment by Tan to the association should operate as an agreement to grant a tenancy to one or more suitable persons as trustees for the association. It would not be equitable to make an order to that effect without giving the plaintiffs an opportunity to adduce any equitable defences which may be available to them.

The real defendants are nine hundred children in primary class and their education ought not to be interrupted until all reasonable alternatives have been examined.

The titular defendants will therefore have liberty to amend their defence, if so advised, by counter-claiming for the equitable relief indicated and for any other equitable relief which they may be advised is available to them, subject to their paying into Court the amount of rent now in arrear, plus $125 for July.

If no amendment is made within 21 days the plaintiffs may move for judgment.

If some such amendment is made the plaintiffs may have 21 days to reply.

It may not be too late for some arrangement to be made by the parties so as to avoid further litigation and in this context the defendants will remember that those who seek equity must first do equity. Having regard to the description of the property the existing rent, $125, seems low. That may be a matter for the Rent Board, but there is much to be said in favour of a comprehensive settlement.

Order accordingly.

Solicitors for the plaintiffs: *Donaldson & Burkinshaw.*
Solicitors for the defendants: *Allen & Gledhill.*

In re ANTHARANIK SIMON.

[A. Cr. J. (Spenser Wilkinson, J.) June 28, 1954]

[Penang — Criminal Revision No. 28 of 1954]

Road Traffic — Motor Vehicles (Driving Offences) Proclamation, s. 3(1) — Motor Vehicles Third Party Risks Regulations, reg. 3(1) — Disqualification — Special grounds.

The accused was charged with employing a person who was not a holder of a driving licence to drive a motor car, and of permitting the vehicle to be driven without there being in force in relation to the use of the said vehicle a policy of insurance. The accused pleaded guilty and was convicted and fined $40 on the first charge and $75 on the second charge. No period of disqualification was imposed as it appeared that the accused was dependant on the use of his car for his livelihood.

Held, following **Whittal v. Kirby**(3) and **Public Prosecutor v. Karthiah**(2): the fact that the accused was dependant on his car for his livelihood is not a special circumstance entitling the Magistrate to dispense with the disqualification.

Cases referred to:—

(1) *Rex v. Lim Kian Soo* (1950) M.L.J. 181.
(2) *Public Prosecutor v. M. Karthiah* (1953) M.L.J. 52.
(3) *Whittal v. Kirby* (1947) 1 K.B. 194.
(4) *Knowler v. Rennison* (1947) 1 K.B. 488 at p. 496.
(5) *Reavy v. Young* (1949) 1 All E.R. 1102.
(6) *Jones v. English* (1951) 2 All E.R. 853.

CRIMINAL REVISION.

I. K. Meek for the accused.

Cur. Adv. Vult.

Spenser Wilkinson, J.: — The accused was charged with employing a person to drive a motor car who was not a holder of a driving licence, contrary to section 3(1) of the Motor Vehicles (Driving Offences) Proclamation, and also with permitting the vehicle to be driven without there being in force in relation to the use of the said vehicle a policy of insurance, contrary to Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations.

The accused pleaded guilty and having been convicted on his plea was fined $40 on the first charge and $75 on the second charge. The following note by the Magistrate appears on the record:—

"Accused states he is occupied as a traveller by Messrs. Guthrie & Co. and travel by road. He is thus dependent on his car for his livelihood. No suspension ordered."

Mr. Meek who appeared on behalf of the accused on the hearing of the revision relied on the case of *Rex v. Lim Kian Soo*(1) as authority for the proposition that the question of disqualification is entirely discretionary in the Magistrate. Mr. Meek was apparently

under the impression that this was a decision of the Court of Appeal, but agreed after further consideration of the report that it was the majority decision of a Court of three Judges. It is, therefore, a High Court decision and in so far as it conflicts with the decision given in Kuala Lumpur in 1949 in the case of *Public Prosecutor v. M. Karthiah*[2] I feel bound to follow the Federation decision. Although the then Chief Justice considered that this decision was of sufficient importance to cause copies of the judgment to be circulated to all the Courts of the Federation it was not reported until 1953, and I think it more than probable that had this case been drawn to the attention of the High Court in Singapore that Court might have decided the case of *Rex v. Lim Kian Soo*[1] differently. However this may be, the case of *Public Prosecutor v. M. Karthiah*[2] has, as far as I am aware, been consistently followed in the Federation ever since it was decided, and is in accordance with a large body of decisions in the United Kingdom.

The report of *Rex v. Lim Kian Soo*[1] is unsatisfactory in various respects. In the first place the headnote is inaccurate as it includes as part of the decision certain remarks made by Evans J. in his dissenting judgment. Moreover, as there is no indication in the report what the facts of the case were, it is impossible to discover precisely to what extent the Court intended to depart from the decisions of the English Courts. As I understand the case, it suggests that the Courts in this country have a wider discretion than the Courts in England in the matter of refraining from disqualification. I would add that the learned Chief Justice in his judgment, referring to the case of *Whittal v. Kirby*[3] said :—

"It has to be considered whether this Court should follow that case, which is, of course, only of persuasive authority so far as we are concerned."

and apparently dealt with that case as though it stood by itself. But *Whittal v. Kirby*[3] is only one of a series of English cases which have all been decided in the same sense. In *Knowler v. Rennison*[4] the judgment of the Court says :—

"The decision may now be said to be uniform throughout the United Kingdom that hardship is not a special reason for refraining from imposing this punishment."

The judgment in *Public Prosecutor v. M. Karthiah*[2] quoted and adopted the following passage from the judgment in *Whittal v. Kirby*[3], which indicates sufficiently clearly that the reason given by the learned Magistrate for refraining from imposing disqualification in the present case was wrong :—

"In my opinion Magistrates . . . . . must take it to be the law that no considerations of financial hardship or of the offender being before the Court for the first time, or that he has driven for a greater number of years without complaint, can be regarded as a special reason within these Sections."

Mr. Meek on behalf of the accused further submitted that the full facts had not been put before the Court below. He stated that the driver whom the accused permitted to drive the vehicle was his wife and that there was the question of the wife having taken over the driving for a very short time in such circumstances as possibly to bring the case within the decision in *Reay v. Young*[5].

It is no doubt to some extent the accused's own fault if he did not put all the facts before the Magistrate, but it may be that as the Magistrate was prepared to refrain from disqualification upon a wrong ground he did not find it necessary to give the accused an opportunity for raising other possible grounds. Moreover, it has been pointed out in England that it is highly desirable, where the accused seeks to rely on special reasons in cases of this kind, to hear evidence on the point and not merely to accept statements, because the onus is on the accused to show special reasons (*Jones v. English*[6]). In these circumstances I thought it right to remit the case to the Magistrate to enable him to go fully into the facts in order to see whether there were any special circumstances which might justify dispensing with the disqualification.

The re-hearing on this point is subject to my direction that the fact that the accused was dependent on his car for his livelihood is not a special circumstance entitling the Magistrate to dispense with disqualification.

One further point has come to my attention since the hearing of this revision, and that is that the first charge in the present case was that the accused did *employ* one Rose Mary Simon to drive the vehicle. If, in fact, Rose Mary Simon was the accused's wife then it appears most unlikely that the accused employed her.

Under the present law it is not an offence merely to permit another to drive a vehicle without a licence. The prosecution should not, therefore, charge people with employing persons to drive vehicles without a licence unless they can prove that the driver is in fact an employee. I find it difficult to escape the impression, particularly as this is not the only case of its kind which has come to my notice, that Magistrates are not properly explaining to the accused the meaning of this charge. It is the responsibility of Magistrates to ensure that charges are properly explained to accused persons. As I am not satisfied that the accused really intended to plead guilty to employing Rose Mary Simon to drive I quash the conviction on the first charge and order a retrial thereon. If the driver was in fact an employee no doubt the accused will again plead guilty to the charge.

Order accordingly.

Solicitors for the accused : *Presgrave & Matthews.*